



Employee Benefit Plan Current Developments

May 2010

I. Employee Benefit Security Administration (EBSA) New E-Signature Option for Form 5500 Electronic Filing.

Under this new filing option (which was intended especially for small businesses that use service providers to complete and file their annual reports (Form 5500)), service providers that manage the filing process for plans can get their own signing credentials and submit the electronic Form 5500 or 5500-SF for the plan. The service provider must confirm that it has specific written authorization from the plan administrator to submit the plan's electronic filing.

When using this option the plan administrator must manually sign a paper copy of the completed filing, and the service provider must attach a PDF copy of the manually signed Form 5500 or 5500-SF as an attachment to the electronic filing submitted to EFAST2. The preparer uses his/her credentials to sign the return. The preparer is precluded from using the plan administrator's credentials to sign the Form 5500 or Form 5500-SF because of the prohibition on sharing credentials. Signers should be made aware that the Form 5500 or Form 5500-SF will be posted by the DOL on the Internet for public disclosure within 24 hours after the filing is received, and therefore, their signature can be viewed.

Preparer's of the Form 5500 or Form 5500-SF who sign the return are also required to certify that they will communicate any inquiries and information received from EFAST2, DOL, IRS or PBGC regarding the filing.

II. IRS Form 8955-SSA

The Form 8955-SSA (Form) has replaced the Schedule SSA to report participants who have separated from service with an employer but still have a deferred vested benefit with the employer's retirement plan(s). This new Form is required beginning with the 2009 plan year. The Form has not yet been released by the IRS, but is expected to be issued shortly. The IRS indicated the Form's normal due date, which is due 7 months after the end of the plan year, will likely be automatically extended. This form is required to be filed by paper only to the IRS's, Ogden Utah Service Center and is not part of the Form 5500 electronic filing process with EBSA. The Form 5558 Extension form will be used to extend the time to file (i.e., up to an additional 2 1/2 months) the Form with the IRS.

III. Tax – Sheltered Annuities – 403(b) Plans

1. The IRS expects to open a prototype program during the summer to issue opinion letters to prototype plan document preparer's. The prototype plan document format generally consists of a basic plan document and an adoption agreement that requires completion by the plan sponsor. Many plan sponsors have adopted prototype plan preparer's plan documents. Generally an employer can rely on the IRS opinion letter issued to the prototype plan preparer for their 403(b) plan. However, the IRS indicated that any amendment or attachments made by the employer to the 'standard' plan document will generally cause the employer's plan to not be covered by the IRS opinion letter. In those situations, an employer can consider requesting an IRS determination letter from the IRS for their plan. The program for issuing determination letters is expected to be established by the IRS in the future.
2. The IRS is developing specific guidance to help employers understand new termination rules under Section 403(b). The final regulations issued by the IRS in July of 2007 provided for the first time information regarding the termination of a 403(b) plan. A plan must contain the terminating plan language in order to terminate the plan. Without additional guidance provided by the IRS, the process of actually terminating a 403(b) is not fully understood
3. The IRS has issued information relating to their 403(b) examination findings. They have indicated College and University plans resulted in the highest error rate with 85%, followed by healthcare organizations – 83%. The remaining categories identified by the IRS included Schools K-12 (private and public) and other exempt organizations and governmental employers. IRS examinations include both ERISA and non-ERISA 403(b) plans.

The two (2) primary issues identified by the IRS included plans not having the proper records and processing regarding the contribution (including catch-up and the special 15-year rule contributions) process, and satisfying the universal availability requirement for elective deferrals.

IV. IRS 401(k) Questionnaire to be Issued to 1200 Plan Sponsors

The IRS intends to issue the voluntary questionnaire to randomly selected 401(k) plans by the end of May 2010.

The 401(k) plan compliance questionnaire is a project of the Employee Plans Compliance Unit. Its purpose is to take a "snapshot" of Section 401(k) plan compliance and provide data to help IRS focus guidance and outreach for these plans. The questionnaire is expected to be completed and returned to the IRS within 90 days. The IRS indicated it was acceptable to share the questionnaire with the plan's providers to respond correctly.

The IRS stressed that the questionnaire was not an audit but did say the information will be utilized in various ways, including an enforcement action if appropriate. Failure to provide a response to the IRS can result in the plan being selected for an examination.

If you would like more information about Employee Benefit Plans and current developments, please contact Louis F. LiBrandi at (212) 286-2600; lbrandi@odmd.com, or Tim Desmond at 914-381-8900; tdesmond@odmd.com.

Best regards,



O'Connor Davies Munns & Dobbins, LLP
Employee Benefit Services Group

Copyright © 2010 O'Connor Davies Munns & Dobbins LLP

IRS CIRCULAR 230 DISCLOSURE: To comply with IRS regulations, we are required to inform you that unless expressly stated otherwise, any discussion of U.S. federal tax issues in this correspondence (including any attachments) is not intended or written to be used, and cannot be used, (i) to avoid any penalties imposed under the Internal Revenue Code, or (ii) to promote, market, or recommend to another party any transaction or matter addressed herein.

Harrison, NY
914.381.8900

New Windsor, NY
845.220.2400

New York, NY
212.286.2600

Paramus, NJ
201.712.9800

Stamford, CT
203.323.2400

White Plains, NY
914.421.5600

www.ODMD.com